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| MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903 | | | NGUYEN, SON T | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3643 | |

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,520

Applicant(s)

ZANGLE ET AL.

Examiner

Son T. Nguyen

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3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Son T. Nguyen
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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,6,8,10,11,13,14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley et al. (US 5,564,454) in view of Strawcutter et al. (US 5,711,744) and Warner et al. (US 3848615).

For claim 1, Curley et al. disclose a cat toy comprising a flexible elongated tube 1 capable of being positioned in a multitude of curved position since it is collapsible, the tube having a first end (around the area of ref. 3), a second end (around the area of ref. 4) and a middle portion (the middle of the tube around ref. 2), the tube being made from a crinkly plastic film (col. 5, lines 48-55) molded to a tubular shaped coiled loops 7-9 which form a helical frame structure (see fig. 3 and col. 5, lines 57-65, Curley discuss that the loops 7-9 are separate items, but together considered one unit of loops scaffolding, which may be made of a single loop, this indicate that they are a plurality of loops as shown in fig. 3). In addition, the tube of Curley et al. is made from a crinkly plastic film such as Markosite styrene (col. 5, lines 48-55) molded to a tubular shaped coiled wire scaffolding. Furthermore, the middle portion of the tube having an interior and exterior surfaces, and a layer of fabric 20 attached to the interior surface of the middle portion and a second layer of fabric 21 attached to the exterior surface of the

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middle portion (col. 3, lines 40-45). Note, film 21,20 are attached onto film 22 along the whole tube which means that it includes the middle portion.

However, Curley et al. are silent about the loops being spring-steel coiled wire, the tube being positioned in a multitude of S-shaped curves, and the helical frame structure having at least one loop per inch along the entire length of the tube.

Warner et al. teach a collapsible and foldable shelter that is capable of being used as a cat toy, the shelter comprising a plurality of loops made out of spring coiled wire (col. 2, lines 36-41) so as to allow resiliency for collapsing the shelter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the loops of Curley et al. out of spring coiled wire as taught by Warner et al. in order to allow resiliency in the wire for collapsing the toy. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the spring coiled wire of Curley et al. as modified by Warner et al. out of steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (strength of steel for lasting durability) as a matter of obvious choice. In re Leshin, 125 USPQ 416.

Strawcutter et al. teach a helical tube recreational component for a playground unit which is capable of being a cat toy, the tube 1 is positioned in a multitude of S-shaped curves as shown in fig. 1 to make it more fun for the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a multitude of S-shaped curves as taught by Strawcutter et al. in the elongate

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tube of Curley et al. in order to make it more fun for a user to travel in a twist and turn manner.

In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the frame structure of Curley et al. as modified by Warner et al. and Strawcutter et al. be at least one loop per inch, depending on the user's design size criteria of the toy. For example, a larger toy would need different loop per inch than a small toy in order to provide maximum structure support without wasting material.

For claim 6, Curley et al. as modified by Warner et al. and Strawcutter et al. further disclose the tube having a substantially circular cross section but they are silent about the tube having a diameter from 10 to 20 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the diameter of the tube of Curley et al. as modified by Warner et al. and Strawcutter et al. from 10 to 20 inches, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art.

For claim 8, in addition to the above, Strawcutter et al. further teach using polyethylene for the material 5 of the tube 1 (col. 3, line 54). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ polyethylene as taught by Strawcutter et al. as the preferred material for the plastic film of Curley et al. as modified by Warner and Strawcutter, since it has been held to be within the general skill of a worker in the art to select a known material (taught by

Strawcutter et al.) on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

For claims 10 & 11, Curley et al. as modified by Warner and Strawcutter et al. are silent about the tube's length being from 24 to 72 inches or 36 to 60 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the length of the tube of Curley et al. as modified by Warner and Strawcutter et al. from 24 to 72 inches or 36 to 60 inches, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art.

For claim 13, Curley et al. discloses a method of fabricating a cat toy comprising the steps of providing a spring coiled members 7-9; molding a crinkly plastic film (col. 5, lines 48-55) to the coiled members to form a flexible elongated tube 1 having an interior passage; attaching a cloth layer 20 to the interior passage (col. 3, lines 40-45).

However, Curley et al. are silent about the coiled members 7-9 being spring-steel coiled wire, the wire having at least one revolution of coiled wire every inch, and the tube being capable of positioning in a S-shaped curve.

Warner et al. teach a collapsible and foldable shelter that is capable of being used as a cat toy, the shelter comprising a plurality of loops made out of spring coiled wire (col. 2, lines 36-41) so as to allow resiliency for collapsing the shelter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the loops of Curley et al. out of spring coiled wire as taught by Warner et al. in order to allow resiliency in the wire for collapsing the toy. In addition, it would have

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been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the spring coiled wire of Curley et al. as modified by Warner et al. out of steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (strength of steel for lasting durability) as a matter of obvious choice. In re Leshin, 125 USPQ 416.

In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the spring-steel coiled wire of Curley et al. as modified by Warner at least one revolution of coiled wire every inch, depending on the user's design size criteria of the toy. For example, a larger toy would need different loop per inch than a small toy in order to provide maximum structure support without wasting material.

Strawcutter et al. teach a helical tube recreational component for a playground unit which is capable of being a cat toy, the tube 1 is positioned in a multitude of S-shaped curves as shown in fig. 1 to make it more fun for the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a multitude of S-shaped curves as taught by Strawcutter et al. in the elongate tube of Curley et al. in order to make it more fun for a user to travel in a twist and turn manner.

For claim 14, Curley et al. as modified by Warner et al. and Strawcutter et al. further disclose the step of attaching a second cloth layer 21 (of Curley) to an exterior surface of the tube (Curley, col. 3, lines 40-45). Also see explanation to claim 1 above.

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3. **Claims 5 & 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley as modified by Warner and Strawcutter as applied to claims 1,13,14 above, and further in view of Johnson (US 5,921,204).

For claim 5, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about the tube having at least one air hole. Johnson teaches an expandable tube 8 in which he employs air holes 25a along the tube or at certain section of the tube so as to prevent condensation in the tube and allows entry of fresh air into the tube (col. 3, lines 24-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ at least one air hole as taught by Johnson in the tube of Curley et al. as modified by Warner et al. and Strawcutter et al. in order to prevent condensation in the tube and to allow entry of fresh air into the tube.

For claim 15, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about the step of forming at least one air hole through the tube. Johnson, as explained in the above paragraph, further teach the step of forming at least one air hole 25a (teaching of Johnson) through the tube for prevention of condensation and for allowing fresh air into the tube. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of forming at least one air hole as taught by Johnson through the tube of the method of Curley et al. as modified by Warner et al. and Strawcutter et al. in order to prevent condensation in the tube and to allow entry of fresh air into the tube.

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4. **Claims 7 & 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley as modified by Warner and Strawcutter as applied to claim 1 above, and further in view of Westphal (US 5,620,396).

For claim 7, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about having a removable cover piece at either the first or second ends of the tube. Westphal teaches a toy tunnel in which he employs a cover (can be seen at refs. A,D,B rolled up) to cover the ends of an elongated tunnel. The cover of Westphal can be rolled up and attached to Velcro if one wishes to not have the cover covering the tunnel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cover as taught by Westphal in the tube of Curley et al. as modified by Warner et al. and Strawcutter et al. in order to cover either the entrance or exit of the tube. Curley et al. as modified by Warner et al. and Strawcutter et al. and further modified by Westphal's are silent about the cover being removable because the cover at the ends are a part of an integral large sheet of cover. However, it is notoriously well known that covers at entrances or exits can be made to be removable in a shelter or tunnel structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cover of Curley et al. as modified by Warner et al. and Strawcutter et al. and further modified by Westphal be removable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Newin vs. Erlicnman*, 168, USPQ 177,179.

For claim 17, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about a portion of the fabric layer attached to the exterior of the middle portion

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extends beyond the first and second ends of the tube to form a fabric flap entrance. Westphal teaches a toy tunnel as mentioned above. The flaps A,B,D of Westphal provide fabric flap entrances, each flap is a part or portion of a continuous sheet of fabric that extends from end to end of the tube. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fabric flap entrance as taught by Westphal at ends of the toy of Curley et al. as modified by Warner et al. and Strawcutter et al. so as to provide an entrance/exit door for the animal. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ extra material in the fabric layer covering the tube of Curley et al. as modified by Warner et al. and Strawcutter et al. and further modified by Westphal and extending the extra material fabric layer beyond the ends of the tube to create fabric flap entrance as that taught by Westphal so as to provide an entrance/exit door for the animal that saves labor and time because the user would not have to cut separate fabric portion to make the door.

5. **Claims 7,18 & 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley as modified by Warner and Strawcutter as applied to claim 1 above, and further in view of Maggio (US 4,979,242).

For claims 7 & 19, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about a removable cover piece having a cylindrical cup shape covering either first or second ends of the tube. Maggio teaches a collapsible room shelter that can be a cat toy comprising a flexible tube 2 having first and second ends, the first end is covered by a removable cylindrically cup shaped cover piece 13 so as to be stored in

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the case 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable cover piece having a cylindrical cup shape and the casing as taught by Maggio to store the collapsible toy structure of Curley et al. as modified by Warner et al. and Strawcutter et al.

For claim 18, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about first and second protective edge coverings encasing the ends of the tube. Maggio teaches a collapsible room shelter that can be a cat toy comprising a flexible tube 2 having first and second ends, the first end is covered by a removable cylindrically cup shaped cover piece 13 and the second end is covered by a casing 3 for storage purpose. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a removable cover piece and the case as taught by Maggio at one end of the collapsible toy structure of Curley et al. as modified by Warner et al. and Strawcutter et al. in order to store the toy so as to prevent the tube from being frayed or tore.

6. **Claims 9 & 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Curley as modified by Warner and Strawcutter as applied to claim 1 above, and further in view of Zoroufy (US 5,351,646).

For claim 9, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about catnip being suspended from an interior surface of the middle portion. Zoroufy teaches an animal hair collecting device, that can also be a cat toy, where Zoroufy employs catnip in the cat toy 90 suspended from the interior of the device to further entice the animal in the device (col. 13, lines 40-45). It would have been obvious

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to one having ordinary skill in the art at the time the invention was made to employ catnip as taught by Zoroufy suspended from the interior surface of the tube of Curley et al. as modified by Warner et al. and Strawcutter et al. in order to further entice an animal in the toy. Curley et al. as modified by Warner et al. and Strawcutter et al. and further modified by Zoroufy are silent about the location of the catnip, i.e. being placed in the middle portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the catnip of Curley et al. as modified by Warner et al. and Strawcutter et al. and further modified by Zoroufy anywhere along the interior surface of the tube depending on the user's preference.

For claim 16, Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about a fabric mat entrance form from a portion of the fabric layer attached to the interior of the middle portion of the tube. In addition to the above, Zoroufy teaches in fig. 4A a fabric mat entrance 57 form from a portion of a fabric layer covering a housing or frame 22 of the device so as to provide the animal with a rubbing edge (col. 7, lines 65-68 and col. 8, lines 1-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fabric mat entrance as taught by Zoroufy at ends of the toy of Curley et al. as modified by Warner et al. and Strawcutter et al. so as to provide a rubbing edge for the animal. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ extra material in the fabric layer covering the tube of Curley et al. as modified by Warner et al. and Strawcutter et al. and further modified by Zoroufy and extending the extra material fabric layer beyond the ends of the tube to create fabric mat entrance as

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that taught by Zoroufy so as to provide a rubbing edge for the animal that saves labor and time because the user would not have to cut separate fabric portion to make the mat.

7. **Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over Curley as modified by Warner and Strawcutter as applied to claim 1 above, and further in view of Zheng (US 5,618,246). Curley et al. as modified by Warner et al. and Strawcutter et al. are silent about wherein one or more of the loops at the first end are compressed together to form a substantially enclosed end. Zheng teaches a collapsible play tunnel structures in which the loops of the structure are compressed at an end to allow the structure to be easily collapsed and folded for storage (see fig. 5 and col. 5, lines 50-54). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the loops of Curley et al. as modified by Warner et al. and Strawcutter et al. be compressible together as taught by Zheng in order to allow the structure to be easily collapsed and folded for storage.

Response to Arguments

8. Applicant's arguments filed 3/8/04 have been fully considered but they are not persuasive.

Applicant argued that modification of Curley's collapsible structure with Warner's plurality of loops would render Curley unfit to collapse in its desired manner along its central axis and occupy the same minimal volume. Curley teaches that central support member form a spiral path, not loops. As such, Curley as modified by Warner would be inoperable for its intended purpose. The

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same argument is made with reference to Curley in combination with Strawcutter, where employment of a multitude of S-shaped curves in Curley again would render the collapsible child toy inoperable for its intended purpose.

Modification of Curley with other references in no way alters Curley's invention, for the invention will still be a collapsible toy structure because both Warner and Strawcutter are relied upon for features that have nothing to do with altering the collapsibility of Curley's toy along a central axis to occupy minimal volume. Warner et al. were relied upon for spring coiled wire for allowing resilient collapsibility of the toy, which would still allow the toy of Curley to be folded along a central axis to occupy minimal volume. Strawcutter was relied upon for S-shaped toy to make the toy more fun and challenging, therefore, has nothing to do with collapsibility along central axis because Curley's toy already function to perform as such.

In collapsed state, the support member of Curley is a loop and when modified with Warner, there will be multiple loops to make the toy longer, which still function the same and will not alters Curley's original intention. The definition of the word loop from the Microsoft Basic dictionary is "A length of line, thread, ribbon, or other thin material that is curved or doubled over making an opening", OR "Something having a shape, order, or path of motion that is circular or curved over on itself", which fits with the support member of Curley because it is a thin material that is curved or doubled over making an opening, OR a path of motion that is circular or curved over on itself". The support member of Curley produces a circular path in a vertical plane with the lateral axis of the support member remaining horizontal.


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Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.


Son T. Nguyen
Primary Examiner, GAU 3643
June 1, 2004